



***Editor's Foreword***

***By Elizabeth Humphreys***

**— Employment Law —**

California Litigation is devoting this issue to "Employment Law," one of the fastest growing areas of litigation in California. Both the federal and state statutory and case law are constantly experiencing major changes and establishing new trends. Due to the ubiquitous nature of employment law, its development is not only of professional interest to litigators but also of personal interest to attorney employers and employees who are not immune to the "trials and tribulations" inherent in any work place.

*Keith Hutchinson and Thomas J. McDermott, Jr.* analyze the effects of "after-acquired evidence," on an employee's wrongful termination claim. The article, through a hypothetical case, examines whether previously undisclosed wrongdoing by an employee, learned by the employer during discovery, should be allowed to bar her employment claim.

*David A. Lowe* considers whether the cancellation of an employee's unvested stock options upon his termination may give rise to a claim for breach of contract or tortious discharge against his employer.

*George S. Howard* discusses California's adoption of a new "Disabilities Act," which provides much broader and inclusive access than the federal disability statutes. California has reacted to the federal courts' narrow construction of the federal Act to expand coverage and limit employer summary judgment motions.

*Stephen Berry and Sherri Fanger McInnes* criticize the use of California Business and Professions Code section 17200 representative actions in wage and hour disputes theorizing that section 17200 claims result in complex and inefficient trials violating the due process rights of employers and absent, represented non-party employees.

*Anne E. Castle and Scott D. Gattey* recommend that California employers expect a race to the court house when they hire an employee who signed a non-compete clause with her former out of state employer. California courts have repeatedly found in favor of the California employer and employee, but only when the California court is the first court to obtain jurisdiction.

*Steven G. Zieff and Patrice Goldman* provide an overview of federal and state overtime laws and how these laws may be used in class actions on behalf of large groups of employees subjected to the same unlawful practices by an employer.

*John M. True* gives us an update regarding the status of mandatory arbitration of employment claims. The California Supreme Court recently held that an employer may compel, pursuant to an employment contract, arbitration of work place claims under the Fair Employment and Housing Act ("FEHA ") if certain "fairness"

tests are met. Mr. True analyzes how this decision starkly contrasts with Ninth Circuit case law holding that an employee may not be compelled to arbitrate Title VII (and FEHA) claims.

*Gene Tanaka and Piero Dallarda* examine the three standards of appellate review describing each standard and when and why each standard is used.

*The Honorable Eileen C. Moore's Judicial Opinion* enthusiastically recaps her "employment in the law" and provides a personal analysis of the differences between "judging" in the superior and the appellate courts.

### **— Looking Ahead —**

Our next issue "No Lawyer's an Island" focuses on the need for collaboration in the practice of law. We will feature articles on legal conflicts, the litigation privilege, litigators and bankruptcy, pro bono work, programs for troubled lawyers and life beyond the law.

*Elizabeth Humphreys, Editor-in-Chief of California Litigation, is a partner with the law firm of Kroloff, Belcher; Smart, Perry & Christopherson in Stockton.*

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The journal is sent free to members of the Litigation Section.

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### **The Litigation Section**

**State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639**